| UNITED STATES DISTRICT COURT | EASTERN DISTRICT OF TEXAS |
|------------------------------|--------------------------------|
| JAMES ERIC LOFTEN, | |
| Petitioner, | 8 8 |
| versus | § CIVIL ACTION NO. 1:17-CV-289 |
| DIRECTOR, TDCJ-ID, | 8 |
| Respondent. | § § |

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

James Eric Loften, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a conviction for possession of a controlled substance.

The court previously referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of the court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be dismissed without prejudice as repetitious.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. After careful consideration, the court is of the opinion the objections are without merit. In his lengthy objections, petitioner attempts to show why his criminal conviction is invalid. However, he does not attempt to show why the current petition is not repetitious of the petition assigned civil action number 1:15cv323. As petitioner is challenging the same criminal conviction challenged in the prior petition, the court agrees that the current petition is repetitious.

ORDER

Accordingly, the objections filed by petitioner are OVERRULED. The findings of fact

and conclusions of law of the magistrate judge are correct and the report of the magistrate judge

is ADOPTED. A final judgment will be entered dismissing the petition.

In addition, the court is of the opinion petitioner is not entitled to a certificate of

appealability. An appeal from a final judgment denying habeas relief may not proceed unless a

certificate of appealability is issued. See 28 U.S.C. § 2253. The standard for a certificate of

appealability requires the petitioner to make a substantial showing of the denial of a federal

constitutional right. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000); Elizalde v. Dretke, 362

F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not establish

that he would prevail on the merits. Rather, he must demonstrate that the issues raised in the

petition are subject to debate among jurists of reason, that a court could resolve the issues in a

different manner, or that the questions presented are worthy of encouragement to proceed further.

See Slack, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability

should be resolved in favor of the petitioner, and the severity of the penalty may be considered in

making this determination. See Miller v. Johnson, 200 F.3d 274, 280-81 (5th Cir. 2000).

In this case, the petitioner has not shown that the issue of whether his petition is repetitious

is subject to debate among jurists of reason. The factual and legal questions raised by petitioner

have been consistently resolved adversely to his position and the questions presented are not

worthy of encouragement to proceed further. As a result, a certificate of appealability shall not

issue in this matter.

SIGNED at Beaumont, Texas, this 23rd day of June, 2020.

UNITED STATES DISTRICT JUDGE

Maria a. Crona

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